IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16779 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAY KISHANRAV JADAV (MARATHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16779 of 2003

MR SATISH R PATEL for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

Learned Advocate for the petitioner produces on record a communication received from the Government and the postal acknowledgement which are taken on record. Learned AGP also produces on record affidavit of the detaining authority which is taken on record.

2. The petitioner has filed this petition under under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 29.10.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

3. The case against the petitioner was that three cases relating to offence under section 66(b), 65(E) and 81 of the Bombay Prohibition Act, 1949 were registered against the petitioner before Prohibition police station Eastern division, Amraivadi police station, Amraivadi police station CR No.1271/03, 5174 and 5189/2003 on 19.9.03, 7.10.03 and 25.10.03 respectively. That on the strength of the abovesaid offences, the detaining authority has passed an order of detention saying that the petitioner was a bootlegger. The petitioner has challenged the said order of detention on several grounds saying that the alleged bootlegging activities of the petitioner would lead to a threat to public order or public health and, therefore, the detention order could not have been passed by the detaining authority.

4. On receipt of the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

5. The petitioner has contended that three offences under the Bombay Prohibition Act have been registered against the petitioner but it could not be said that the petitioner's alleged bootlegging activities would lead to a threat to public order or public health. Learned AGP has shown a decision in the case of Kanuji S Zala v. State, reported in 2000 (4) GLR 3256.

6. However, the said decision was considered by this Court (Hon'ble Mr Justice N G Nandi) in Special C.A. No.16342/2003 on 26.2.2003 wherein it was observed even after considering the above decision that registration of prohibition could not be treated to be a threat to public order or public health, inasmuch as there was no credible material before the detaining authority for coming to a finding that the alleged bootlegging activities of the petitioner would lead to a threat to public order or public health. Following the principles laid down by this court in the aforesaid decision, it has to be held

that the alleged activities of the petitioner could not be treated to be activities which would lead to a threat to public order or public health. Consequently, the order of detention cannot be sustained in the eye of law.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 29.10.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp